



February 4, 2000

Mr. Nick Todaro  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2000-0409

Dear Mr. Todaro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132023.

The City of Midland (the "city") received a request for "a copy of the arrest report" for an incident in which a named individual was arrested on or about October 30, 1999. You have provided for our review incident report number 9910300062, which you advise is responsive to the request. You have released the incident report to the requestor with certain information redacted. You assert that the redacted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert some of the information you have marked is excepted from disclosure under section 552.108(a)(1) and (2) of the Government Code. In relevant part, section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

\* \* \*

- (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information does not explain on its face how and why its release would interfere with law enforcement. As to the section 552.108(a)(1) assertion, you state the disclosure of the information "would divulge investigative techniques which, if known by criminals, would facilitate criminal activity." The information at issue is essentially a recitation of factual events. You have not explained how or why disclosure of this information would divulge investigative techniques. We thus determine the information is not excepted from disclosure under section 552.108(a)(1). As to the section 552.108(a)(2) assertion, you state the charges *have not resulted* in a conviction or deferred adjudication. This statement implies that the investigation or prosecution of this matter may be pending. You do not otherwise advise this office of the status of the case. The submitted information indicates the named individual was arrested and charged with a criminal offense on October 30, 1999. Section 552.108(a)(2) applies to information that *did not result* in a conviction or deferred adjudication. We cannot assume that the matter has reached a final result other than conviction or deferred adjudication. We therefore conclude you have not demonstrated the applicability of section 552.108(a)(2). Because you make no additional arguments or representations with reference to the section 552.108 claim, we conclude you must release the information which you assert is excepted from disclosure under section 552.108.

You have marked certain information which you assert is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We agree with your markings and determine you must withhold the marked information in Exhibit "C" pursuant to section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/jc

Ref: ID# 132023

Encl.            Submitted documents

cc:             Mr. Dick Holland  
                  Boldrick, Clifton, Holland & Essman  
                  1801 West Wall  
                  Midland, Texas 79701  
                  (w/o enclosures)